

Davis -  
Bacon

INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
CHAUFFEURS WAREHOUSEMEN & HELPERS  
OF AMERICA

HOME AND PRINCIPAL OFFICE, 2221 TRUMBULL AVENUE, DETROIT 16, MICHIGAN

WASHINGTON OFFICE OF  
• JAMES V. DONAH •  
GENERAL PRESIDENT  
25 EDOSSIANA AVE., N.W.  
WASHINGTON, D.C. 20001



September 17, 1964

ADMINISTRATIVE FILE

*Davis-Bacon*

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TO LOCAL UNIONS ENGAGED IN THE CONSTRUCTION INDUSTRY:

Dear Sir and Brothers:

I should greatly appreciate an early reply to my letter dated August 5 enclosing forms to be filed with the Davis-Bacon Division setting forth in detail the fringe benefits established in your construction agreement, such as health and welfare, pension, paid holidays, vacation, etc. This information is urgently needed by the Department of Labor for inclusion in future wage determinations.

With best wishes, I remain

Respectfully yours,

*Thomas H. Owens*

Thomas H. Owens, Director  
National Division of Building  
Material & Construction Drivers

THO:pf

INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
CHAUFFEURS-WAREHOUSEMEN & HELPERS  
OF AMERICA

MAIN AND PRINCIPAL OFFICE, 1801 TRUMBULL AVENUE, DETROIT 16, MICHIGAN

WASHINGTON OFFICE OF  
• JAMES R. HOFFA •  
GENERAL PRESIDENT  
25 LOUISIANA AVE. N.W.  
WASHINGTON 1, D. C.

January 30, 1964



TO ALL LOCAL UNIONS ENGAGED IN THE CONSTRUCTION INDUSTRY:

LOCAL UNION FILE

*Davis-Dacon Act*

Dear Sir and Brother:

There is enclosed for your information a copy of the new Labor Department Davis-Dacon Regulations which become effective on February 3, 1964. The principal revisions in the administration of the Davis-Dacon Act are as follows:

1. The establishment of a Wage Appeals Board to consist of three public members to be appointed by the Secretary of Labor. The Board will have the authority to hear and decide appeals from wage determinations, review cases in which contractors are black-listed, disputes over prevailing wage rates or proper classifications, and the recommendations of federal agencies for appropriate adjustment of liquidated damages assessed under the Contract Work Hours Standards Act. Review in all such cases is discretionary with the Board and not automatic.
2. An extension of the effective date of initially-issued wage determinations for bid preparation purposes from 90 to 120 days. Modifications of wage determinations will not be enforceable if issued less than 10 days before bids are opened. Heretofore the restriction has been 5 days.
3. The 30 percent rule is adhered to firmly for determining prevailing pay scales in areas where a majority rate cannot be found. The "prevailing wage rate" is defined as follows:
  - (a) The rate of wages paid in the area in which the work is to be performed to the majority of those employed in that classification in construction in the area similar to the proposed undertaking.
  - (b) In the event that there is not a majority paid at the same rate, then the rate paid to the greater number: Provided, such greater number constitutes 30 percent of those employed; or
  - (c) In the event that less than 30 percent of those so employed receive the same rate, then the average rate.
4. The Copeland Act (anti-kickback) is modified to allow federal contractors to make certain routine payroll deductions without special permission of the Secretary of Labor. These include deductions for health, pension and vacation funds, purchase of U. S. Savings Bonds, Red Cross contributions, income and social security taxes, etc.

5. The new regulations define what is meant by "construction" and the terms "building" or "work" as follows:

"The terms 'building' or 'work' generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, powerlines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals; dredging, shoring, scaffolding, drilling, blasting, excavating, clearing, and landscaping.

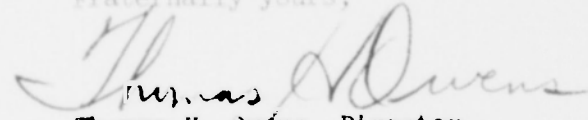
"Unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, the manufacture or furnishing of materials, articles, supplies, or equipment is not a 'building' or 'work' within the meaning of the regulations.

"The terms 'construction', 'completion', or 'repair' are defined as meaning 'all types of work done on a particular building or work at the site thereof, including, without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractors, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work by persons employed at the site by the contractor or subcontractor.'"

I suggest that you familiarize yourself with these administrative revisions of the Act, and remind you that it is more important than ever that new wage agreements and signed payment evidence for areas where your wage rates are not established be forwarded to this office immediately so as to insure the predetermination of our proper rates.

With best wishes, I remain

Fraternally yours,



Thomas H. Owens, Director  
National Division of Building  
Material & Construction Drivers

Enclosure

THO:pf  
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1-8-64

Davis-Bacon Act

No. 433

NEW LABOR DEPARTMENT DAVIS-BACON REGULATIONS AND  
SECRETARY'S ORDER ESTABLISHING WAGE APPEALS BOARD

Title 29—LABOR

Subtitle A—Office of the Secretary of  
Labor

PART 1—PROCEDURE FOR PREDE-  
TERMINATION OF WAGE RATES

PART 3—CONTRACTORS AND SUB-  
CONTRACTORS ON PUBLIC BUILD-  
ING AND PUBLIC WORK AND ON  
BUILDING AND WORK FINANCED  
IN WHOLE OR IN PART BY LOANS  
OR GRANTS FROM THE UNITED  
STATES

PART 5—LABOR STANDARDS PRO-  
VISIONS APPLICABLE TO CON-  
TRACTS COVERING FEDERALLY  
FINANCED AND ASSISTED CON-  
STRUCTION

Revisions

All relevant matters presented by in-  
terested persons regarding the proposed  
revisions of Parts 1, 3 and 5, Title 29,  
Code of Federal Regulations, published  
in the Federal Register at 27 F.R. 10761  
have been carefully considered. After  
such consideration and pursuant to E.O.  
161 (5 U.S.C. 225, section 2 of the Act  
of June 19, 1934, 48 Stat. 878, 40 U.S.C.  
276c), section 10 of the Portal-to-Portal  
Act of 1947 (61 Stat. 89, 29 U.S.C. 258),  
and Reorganization Plan No. 14 of 1950  
(16 CFR 1949-53 Comp. 1, 1007), Title  
29 of the Code of Federal Regulations is  
hereby amended by revising Parts 1, 3  
and 5 thereof in the manner indicated  
below.

The principal changes accomplished  
by the revisions are designed:

(1) To facilitate the administration of  
the prevailing wage provisions of the  
Davis-Bacon Act and its related statutes  
by making wage determinations effective  
for 120 calendar days from the date of  
their issuance, by providing a uniform  
procedure for the establishment of wage  
rates for classifications not included in  
wage determinations, and by giving  
the administering agencies more time  
for implementing changes in wage  
determinations.

(2) To improve the prevailing wage  
determination process by providing for  
the submission of pertinent information  
by the agencies requesting wage determi-  
nations.

(3) To improve the so-called Copeland  
anti-kickback regulation by eliminat-  
ing the necessity of requests for permis-  
sion to make payroll deduction in those  
instances where experience has shown  
that the policy and provisions of the  
Copeland Act will not be infringed.

(4) To aid the coordination of the ad-  
ministration of the labor standards pro-  
visions of the various statutes subject to  
Reorganization Plan No. 14 of 1950 and  
to help improve consistency in their en-  
forcement by providing new reporting  
procedures.

(5) To improve the debarment pro-  
visions under Reorganization Plan No. 14  
of 1950 by providing for a flexible period

of debarment up to three years and by  
providing for removal from the debarred  
list upon a demonstration of current  
responsibility.

(6) To improve the debarment pro-  
cedure by publishing applicable regu-  
lations.

(7) To provide for discretionary re-  
view by the Wage Appeals Board, cre-  
ated by a determination of authority pub-  
lished in the Federal Register on this  
date of wage determinations debarment  
actions, assessments of liquidated dam-  
ages under the Contract Work Hours  
and Standards Act, and decisions otherwise  
made after hearings provided for in 29  
C.F.R. Parts 1 and 3.

These revisions shall become effective  
thirty days after the date of publication  
of this document in the Federal Reg-  
ister.

Part 1 of Title 29 of the Code of Fed-  
eral Regulations is revised as follows:

PART 1—PROCEDURE FOR PREDE-  
TERMINATION OF WAGE RATES

1. Purpose and scope.
2. Definitions.
3. Obtaining and compiling wage rate in-  
formation.
4. Outline of agency construction pro-  
grams.
5. Determination of wage rates.
6. Scope of consideration.
7. Field survey.
8. Hearings.
9. Prehearing conferences.
10. Hearing Examiner's proposed decision.
11. Submission of Hearing Examiner's pro-  
posed decision to interested persons.
12. Exceptions of interested persons.
13. Final decision.
14. Review by Wage Appeals Board.
15. Public information.

Authority: The provisions of this part in-  
clude under E.O. 161, 64 Stat. 1267, sec. 2,  
48 Stat. 898, sec. 10, 42 Stat. 89, 5 U.S.C. 22,  
1536-15, 40 U.S.C. 276c-29 U.S.C. 258. Inter-  
pret of apply sec. 1, 48 Stat. 1494, 43 Stat.  
1011, sec. 212 added to sec. 847, 48 Stat. 1748  
by sec. 14, 54 Stat. 807, sec. 802, added to sec.  
34, 64 Stat. 77, 41 Stat. 801, sec. 2, 60  
Stat. 1041, sec. 15, 60 Stat. 176, sec. 30711,  
63 Stat. 430, sec. 205, 64 Stat. 875, sec. 110,  
68 Stat. 507, sec. 801, 64 Stat. 1240, sec. 3, 72  
Stat. 542, sec. 109, 72 Stat. 800, sec. 6, 62  
Stat. 1156, sec. 15, 72 Stat. 714, sec. 21, 75  
Stat. 615, sec. 15, 75 Stat. 608, sec. 731, 75  
Stat. 167, sec. 101, 122, 195, 208, 77 Stat.  
282, 284, and 286, 40 U.S.C. 276c, 12 U.S.C.  
1701a, 1715e, 1749a, 42 U.S.C. 291b, 1418,  
1516, 1592, 21 U.S.C. 1114, 28 U.S.C. 636, 23  
U.S.C. 141, 30 U.S.C. App. 220, 33 U.S.C. 466.

§ 1.1 Purpose and scope.

The regulations contained in this part  
set forth the procedure for the determi-  
nation of wage rates pursuant to each of  
the following Acts: Davis-Bacon Act,  
National Housing Act, Hospital Survey  
and Construction Act, Federal Airport  
and Airway Act, Federal School Survey  
and Construction Act of 1950, Federal  
Housing and Community Facilities and  
Development Act of 1954, Federal Civil Defense  
Act of 1950, College Housing Act of 1950,  
Federal Water Pollution Control Act,  
Area Redevelopment Act, Delaware River  
Health Compact Housing Act of 1959, and  
Health Professions Educational Assist-

ance Act of 1963, Mental Retardation  
Facilities Construction Act, Community  
Mental Health Centers Act, and such  
other statutes as may, from time to  
time, confer upon the Secretary of Labor  
similar wage determination authority.

§ 1.2 Definitions.

(a) The term "prevailing wage rate"  
for each classification of laborers and  
mechanics which the Solicitor shall re-  
gard as prevailing in an area shall mean:

(1) The rate of wages paid in the area  
to which the work is to be performed, to  
the majority of those employed in that  
classification of construction in the area  
similar to the proposed undertaking;

(2) In the event that there is not a  
majority paid at the same rate, then the  
rate paid to the greater number. Prev-  
ailed. Such greater number constitutes  
a majority of those employed; or

(3) In the event that less than 30  
percent of those so employed receive the  
same rate, then the average rate.

(b) The term "area" in determining  
wage rates under the Davis-Bacon Act  
and the prevailing wage provisions of the  
statutes listed in § 1.1 shall mean the  
city, town, village, or other civil sub-  
division of the State in which the work  
is to be performed. In determining  
wage rates pursuant to section 115 of  
the Federal Airway Act of 1950, the  
College Housing Act of 1950, and the  
Federal Water Pollution Control Act, the  
term "area" shall mean the immediate  
vicinity of the proposed project.

(c) The term "average rate" for each  
classification in an area shall mean the  
rate obtained by adding the hourly rates  
paid to all workers in the classification  
and dividing by the total number of such  
workers.

(d) The term "Solicitor" shall mean  
the Solicitor of Labor.

§ 1.3 Obtaining and compiling wage rate  
information.

For the purpose of making wage rate  
determinations, the Solicitor shall con-  
duct a continuing program for the ob-  
taining and compiling of wage rate  
information.

(a) The Solicitor shall encourage the  
voluntary submission of wage rate data  
by contractors, contractors' associations,  
labor organizations, public officials, and  
other interested parties, reflecting wage  
rates paid to laborers and mechanics on  
various types of construction in the area.  
Rates must be determined, among others,  
for such varying types of projects as  
buildings, bridges, dams, highways, tun-  
nels, sewers, power lines, railways, air-  
ports, buildings and runways, apart-  
ment houses, wharves, levees, canals,  
excavations, land-clearing and excavating.  
Accordingly, the information submitted  
should reflect not only that the specified  
wage rate or rates are paid to a particu-  
lar craft in an area, but also the type or

These definitions are not intended to re-  
strict the meaning of the terms as used in the  
applicable statutes.

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thus from the wages of those employed on such work, and deducts the method of payment permissible on such work.

### § 3.2 Definitions.

As used in the regulations in this part:

(a) The terms "building" or "work" generally include construction activities as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, powerlines, pumping stations, railways, airports, terminals, docks, piers, wharves, levees, lighthouses, buoys, jetties, breakwaters, levees, and canals, dredging, shoaling, reefing, drilling, blasting, excavating, clearing, and landscaping. This is conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, the manufacture or finishing of materials, articles, supplies, or equipment, whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or finishing, or owns the materials from which they are manufactured or furnished, is not a "building" or "work" within the meaning of the regulations in this part.

(b) The terms "construction, prosecution, completion, or repair" mean all work, whether a part of a building or work at the site thereof, including, without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to places of the contractor, subcontractor, or construction subcontractor, and manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work, by persons employed at the site by the contractor or subcontractor.

(c) The terms "public building" or "public work" include building or work for whose construction, prosecution, completion, or repair, as defined above, a Federal agency is a contracting party, regardless of whether title thereof is in a Federal agency.

(d) The term "building or work financed in whole or in part by loans or grants from the United States" includes building or work for whose construction, prosecution, completion, or repair, as defined above, payment or part payment is made directly or indirectly from funds provided by loans or grants by a Federal agency. The term does not include building or work for which the assistance is limited solely to loan guarantee or insurance.

(e) Every person paid by a contractor or subcontractor in any manner for his labor in the construction, prosecution, completion, or repair of a public building or public work or building or work financed in whole or in part by loans or grants from the United States is employed, and receiving wages, regardless of any contractual relationship alleged to exist between him and the real employer.

(f) The term "any affiliated person" includes a spouse, child, parent, or other close relative of the contractor or subcontractor, a partner or officer of the

contractor or subcontractor, a corporation closely connected with the contractor or subcontractor as parent, subsidiary, or otherwise, and an officer or agent of such corporation.

(g) The term "Federal agency" means the United States, the District of Columbia, and all executive department, independent establishments, administrative agencies, and instrumentalities of the United States, and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the District of Columbia, or any of the foregoing departments, establishments, agencies, and instrumentalities.

### § 3.3 Weekly statement with respect to payment of wages.

(a) As used in this section, the term "employees" shall not apply to persons in occupations higher than that of laborer or mechanic and those who are the immediate supervisors of such employees.

(b) Each contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work or building or work financed in whole or in part by loans or grants from the United States shall furnish each week a statement with respect to the wages paid each of its employees engaged on work covered by these regulations during the preceding week.

(c) The statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages, and shall be in the following form:

WEEKLY STATEMENT OF COMPLIANCE

I, \_\_\_\_\_ (Name of signatory party) (Title) do hereby state:

(1) That I pay or supervise the payment of the persons employed by \_\_\_\_\_ (Contractor or subcontractor) on the \_\_\_\_\_ (Building or work) that during the period commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and ending on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made directly or indirectly to or on behalf of said \_\_\_\_\_ (Contractor or subcontractor) from the full weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person other than permissible deductions as defined in Regulations Part 3.29 CPH Part 31 issued by the \_\_\_\_\_ as amended (48 Stat. 948; 43 Stat. 104; 72 Stat. 967; 76 Stat. 637; 40 USC 276c) and described below:

(Paragraph describing deductions, if any.)

(2) That any pay, as otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable rates as incorporated into the contract, that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That all persons employed in the above period are duly registered in a bona fide apprenticeship program registered with

a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

\_\_\_\_\_  
(Signature and title)

Section \_\_\_\_\_ of Title 18 of the United States Code (Criminal Code and Criminal Procedure) shall apply to such statement.

18 USC, 1901, among other things, provides that whoever knowingly and willfully makes or uses a document or fraudulent statement of entry in any matter within the jurisdiction of any department or agency of the United States shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

(c) The requirements of this section shall not apply to any contract of \$2,000 or less.

(d) Upon a written finding by the head of a Federal agency, the Secretary of Labor may provide reasonable limitations, variations, tolerances, and exemptions from the requirements of this section subject to such conditions as the Secretary of Labor may specify.

### § 3.4 Submission of weekly statements and the preservation and inspection of weekly payroll records.

(a) Each weekly statement required under § 3.3 shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency.

(b) If there is no representative of a Federal or State agency at the site of the building or work, the statement shall be mailed by the contractor or subcontractor, within such time, to a Federal or State agency contracting for or financing the building or work. After such examination and check, as may be made, such statement, or a copy thereof, shall be kept available, or shall be transmitted together with a report of any violation, in accordance with applicable procedures prescribed by the United States Department of Labor.

(c) Each contractor or subcontractor shall preserve his weekly payroll records for a period of three years from date of completion of the contract. The payroll records shall set out accurately and completely the name and address of each laborer and mechanic, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Such payroll records shall be made available at all times for inspection by the contracting officer or his authorized representative, and by authorized representatives of the Department of Labor.

### § 3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.

Deductions made under the circumstances or in the situations described in the paragraphs of this section may be made without application to and approval of the Secretary of Labor.

(a) Any deduction made in compliance with the requirements of Federal, State, or local law, such as Federal or







(f) The terms "building" or "work" generally include construction activity.

(1) The term "Federal agency" means the United States, the District of Columbia, and all executive departments, independent establishment, administrative agencies, and instrumentalities of the

When the wage pattern in a particular area for a particular type of construction are well settled and whenever the agency anticipates a large volume of procurement in that area for such a type of construction, it may request the Director of a general wage determination for use on individual contracts for that type of construction in that area. In such a situation the Secretary of Labor may issue such a general wage determination when after consideration of the facts and circumstances involved, he finds that the applicable statutory stand-

tract subject to the labor standards provisions of any of the acts listed in § 5.1 of the subject order to the Con-  
tract Work Hours Standards Act, if  
following clause or any modification  
thereof to meet the particular needs  
of the agency if first approved by the In-  
terdepartmental Labor

cluded in a contract subject to the minimum was prohibited by the statute.

regional determination shall be effective. Any change or modification to the Act made prior to the beginning of construction shall not apply after the mortgage is initially endorsed by the Federal Reserve. A modification to the

of All Actions Involving an Offering of Securities.

and after had obtained the Solicitor's determination expires but is now

...determinations.

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[illegible]

10. The contractor will submit weekly a

Flavell and his family were  
maintained during the course of the war  
and passed for a period of three years  
and the

Under the Export Administration Act of 1969, it is the policy of the United States to restrict the export of defense articles and defense services to countries which are not friendly to the United States. The Department of Defense is responsible for the administration of the Act. The Department of Defense has issued regulations which require the export of defense articles and defense services to be controlled. The Department of Defense has also issued regulations which require the export of defense articles and defense services to be controlled. The Department of Defense has also issued regulations which require the export of defense articles and defense services to be controlled.

the question was asked: "What is the most important factor in the selection of a material for use in a particular application?" The answer was given by the majority of the respondents as follows:

It is important to note that the results of the present study are based on a single measurement of the dependent variable. It would be desirable to have multiple measurements of the dependent variable to increase the reliability of the results. In addition, the present study did not control for the possibility of confounding variables. Future research should attempt to control for these variables to increase the internal validity of the study.

one of the most important factors in the development of the system is the need for a high degree of flexibility. The system must be able to adapt to changing requirements and to the needs of the user. This is achieved by the use of a modular design, which allows the system to be expanded or modified without the need for a complete redesign.

subparagraphs (1), (2), (3) and (4) of this paragraph to be included in any contract subject to the Contract Old Hours Standards Act. As used

1. Other than the project, volunteer's time on

break of clause 21. Contract terminated, defendant liable for damages and awarded \$2,000.00.

1. The first of the two is the "General" which is a list of the names of the persons who are members of the organization. The second is the "List of Officers" which is a list of the names of the persons who are officers of the organization.

1. The first group of people who are interested in the study of the history of the United States are the people who are interested in the history of the United States.

1. The first step in the process of identifying a problem is to determine the nature of the problem. This involves a thorough understanding of the situation and the factors that are contributing to the problem. Once the nature of the problem is understood, the next step is to identify the causes of the problem. This involves a detailed analysis of the situation and the factors that are contributing to the problem. Once the causes of the problem are identified, the next step is to develop a plan to address the problem. This involves identifying the goals of the plan and the steps that need to be taken to achieve those goals. Once a plan is developed, the next step is to implement the plan. This involves taking the steps that are outlined in the plan and putting them into action. Finally, the last step in the process is to evaluate the results of the plan. This involves assessing the progress that has been made and determining whether the plan has been successful in addressing the problem.



**Figure 1**

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liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States in the case of work done under contract for the District of Columbia or a territory, for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the clause set forth in subparagraph (b) (1) in the sum of \$10 for each day that such employee was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (b) (1).

(b) Withholding on unpaid wages and liquidated damages. The Comptroller General of the United States may withhold or cause to be withheld from any money payable on account of work performed by the contractor or subcontractor, such sums as may be determined to be necessary to satisfy any liability of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (b) (1).

(c) Subcontractors. The contractor shall insert in any subcontract the clause set forth in subparagraphs (b) (1), (b) (2), and (b) (3) of this paragraph and also a clause requiring the subcontractor to insert in any further subcontract the clause set forth in subparagraph (b) (1) of this paragraph.

(d) In any contract required to contain the withholding clause set forth in subparagraph (b) (1) of paragraph (a) of this section, the Federal Agency may modify the clause in subparagraph (b) (1) of this section so as to refer only to the withholding and determination of sums for liquidated damages.

(e) In any contract subject only to the Contract Work Hours Standards Act and not to any of the other statutes cited in 151, the Agency Head shall cause or require to be inserted a clause requiring the maintenance of records containing the information specified in 151 (b) (3) of this section. Records containing such information shall be preserved for a period of three years after completion of the contract.

(f) In contracts subject to section 803 of the National Housing Act, the Agency Head shall cause or require inclusion of the following clause: Every laborer and mechanic employed by the contractor or any subcontractor engaged in the construction of the project shall receive compensation at a rate of not less than one and one-half times his basic or regular rate of pay for all hours worked in any workweek in excess of eight hours in any workday or forty hours in the workweek, as the case may be.

**§ 5.6 Enforcement.**

(a) It shall be the responsibility of the Federal Agency to determine whether the clauses required by 155 have been inserted in the contracts. Agencies which do not directly enter into such contracts shall promulgate the necessary regulations or procedures to require that the contracts contain the provisions of 155 or such modifications thereof which have been approved by the Department of Labor. No payment advance, grant, loan, or guarantee of funds shall be approved by the Federal Agency after the beginning of construction unless there is on file with the agency a certification by the contractor that he and his subcon-

tractors have complied or that there is a substantial dispute with respect to the required provisions.

(b) The Federal Agency shall make examination of the submitted payrolls and statements as may be necessary to assure compliance with the labor standards clauses required by the regulations contained in this part and the applicable statutes listed in 151. In connection with such examination payrolls and statements shall be preserved by the agency for a period of 3 years from the date of completion of the contract and shall be made available to the Secretary of Labor at any time during the period.

(c) In addition to the examination of payrolls and statements required by subparagraph (b) of this paragraph, the Federal Agency shall cause investigations to be made as may be necessary to assure compliance with the labor standards

contained in this part and the applicable statutes listed in 151. Projects where the contract is of short duration (6 months or less) shall be investigated before the work is accepted, if feasible. In the case of contracts which extend over a long period of time the investigation shall be made with such frequency as may be necessary to assure compliance. Such investigations shall include interviews with employees and examination of payroll data to determine the correctness of classifications and disproportionate employment of laborers, helpers, or apprentices. Complaints of alleged violations shall be given priority and statements written or oral made by the contractor shall be treated as confidential and shall not be disclosed to his employees without the consent of the contractor.

(d) Whenever any contractor or subcontractor is found by the Secretary of Labor or the Agency Head with the concurrence of the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of any of the applicable statutes listed in 151, other than the Davis-Bacon Act, such contractor or subcontractor or any firm, corporation, or association in which such contractor or subcontractor has a substantial interest shall be ineligible for a period not to exceed 3 years from the date of publication by the Comptroller General of the name or names of said contractor or subcontractor on the ineligible list as provided below to receive any contracts subject to any of the statutes listed in 151. Provided, however, That the Solicitor shall advise the contractor from the debarment list of any contractor or subcontractor whom he has found to have demonstrated a current responsibility to comply with the labor standards provisions applicable to Federal contracts and Federally-assisted construction work subject to any of the applicable statutes listed in 151. In cases arising under the Davis-Bacon Act, the ineligibility provision prescribed in that act shall govern.

(e) The Agency Head shall furnish to the Secretary of Labor for transmittal to the Comptroller General the names of the persons or firms who have been

found to have disregarded their obligations to employees. The Comptroller General will distribute a list to all Departments of the Government giving the names of such ineligible persons or firms.

(f) Whenever, as a result of an investigation conducted by the Agency or the Department of Labor, the officer in charge of the Wage Determination Division, Office of the Solicitor, finds reasonable cause to believe that a contractor or subcontractor has committed willful or aggravated violations of the labor standards provisions of any of the statutes listed in 151, other than the Davis-Bacon Act, or has committed violations of the Davis-Bacon Act which constitute a disregard of its obligations to employees or subcontractors under section 1(a) thereof, the said Wage Determination Officer shall promptly notify by registered or certified mail the contractor or subcontractor and its responsible officers, if any, and any firms in which the contractor or subcontractor was known to have a substantial interest of this finding and afford such contractor or subcontractor and any other parties notified an opportunity to present such reasons or considerations as they have to offer relating to why debarment action should not be taken under 156(b) of this part or section 3(a) of the Davis-Bacon Act. The aforesaid Wage Determination Officer shall furnish to those notified a summary of the investigative findings and shall make available to them any information disclosed by the investigation which is not privately held or confidential for good cause. If this opportunity is requested, an informal proceeding shall be held before a hearing examiner, a regional attorney, or any other Departmental officer of appropriate ability. At the conclusion of the informal proceeding, the presiding officer shall issue his decision, which shall be served by registered or certified mail upon the interested parties.

(g) Within 30 days after service of the decision, any party may file objections to the decision with the Solicitor of Labor, United States Department of Labor, Washington, D.C. Such objections shall be specific and shall be accompanied by reasons or bases therefor. In his discretion, the Solicitor may permit oral argument. If no objections are filed, the decision of the presiding officer shall be final, except in cases under section 3 of the Davis-Bacon Act as to any action to be taken by the Comptroller General under that section.

(h) The decision of the Solicitor shall show a ruling upon each objection presented and shall include a statement of the findings and conclusions, as well as the reasons or bases therefor, upon all material issues of fact, law, or discretion presented on the record and shall contain a proper order or recommendation. The decision of the Solicitor shall be final, except in cases accepted for review by the Wage Appeals Board, and in cases under section 3 of the Davis-Bacon Act as to any action to be taken by the Comptroller General under that section.

(i) Any person or firm debarred under 156(b) may in writing request removal from the debarment list. The

\* The Wage Appeals Board is established by Secretary of Labor's Order 32-63 published in the Federal Register on this date.





the fact. The hearing examiner's decision shall be sent to the interested parties and shall be final unless a petition for review of the decision by the Solicitor of Labor is filed by any such party in quadruplicate with the Chief Hearing Examiner, United States Department of Labor, Washington 25, D.C., within 20 days after receipt thereof. The petition for review must set out separately and particularly each objection asserted. The petition for review and the record which shall include the examiner's decision, then shall be certified by the hearing examiner to the Solicitor of Labor. The petitioner may file a brief, oral argument, and four copies in support of his petition within the 20-day period and any interested party upon whom the hearing examiner's decision has been served may within 10 days after the expiration of the time for filing the petition for review, file a brief in support of or in opposition to the hearing examiner's decision. The Solicitor of Labor's decision shall be subject to such further review by the Wage Appeals Board as it may provide in its discretion.

#### § 5.12. Holdings and interpretations.

All questions arising in any review proceeding shall be governed by the interpretation of the rule contained in this part and in Parts I and II of this subtitle and of the labor laws and provisions of any

other law. The Secretary, for appropriate reasons, may make such interpretations and interpretations shall be authoritative and those under the Davis-Bacon Act may be relied upon as provided in section 10 of the Davis-Bacon Act of 1931 (40 U.S.C. 276a). Requests for such rulings and interpretations should be addressed to the Secretary of Labor, United States Department of Labor, Washington 25 D.C.

#### § 5.13. Variations, tolerances and exemptions from Parts I and 3 of this subtitle and this part.

The Secretary may make variations, tolerances and exemptions from the requirements of this part and those of Parts I and 3 of this subtitle whenever he finds that such action is necessary and proper in the public interest or to prevent injustice and undue hardship.

#### § 5.14. Limitations, variations, tolerances, and exemptions under the Contract Work Hours Standards Act.

(a) General. Upon his own initiative or upon the request of any Federal agency, the Secretary of Labor may, pursuant to section 105 of the Contract Work Hours Standards Act, reasonable limitations and such variations, tolerances, and exemptions to and from any or all provisions of that Act whenever he finds such action to be necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment of the conduct of Government business. Any request for such action by the Secretary shall be submitted in writing and shall set forth the reasons for which the request is made.

(b) Exemptions. Pursuant to section 105 of the Contract Work Hours Standards Act, the following classes of con-

tracts are found exempt from all provisions of that Act in order to prevent injustice, undue hardship or serious impairment of Government business.

(1) Agreements entered into by or on behalf of the Commodity Credit Corporation, providing for the storing in or handling by commercial warehouses of wheat, corn, oats, barley, rice, grain sorghums, soybeans, linseed, rice, naval stores, tobacco, peanuts, dry beans, seeds, cotton, and wool.

(2) Sales of surplus power by the Tennessee Valley Authority to States, counties, municipalities, cooperative organizations of citizens or farmers, corporations and other individuals pursuant to section 19 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831).

(3) Contracts of \$2,000 or less for purchases and contracts for other construction contracts in the aggregate amount of \$2,500 or less. In arriving at the aggregate amount involved, there must be included all property and services which would properly be grouped together in a single transaction and which would be included in a single advertisement for bids if the procurement were effected by formal advertising.

(4) Contract work performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the fol-

lowing: the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (sec. 85, 67 Stat. 465), American Samoa, Guam, Wake Island, and the Canal Zone.

(c) Tolerances. (1) The basic rate of pay under section 102 of the Contract Work Hours Standards Act may be computed as an hourly equivalent to the rate on which time-and-one-half overtime compensation may be computed and paid under section 7 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 207, as interpreted in Part 778 of this title. This tolerance is found to be necessary and proper in the public interest in order to prevent undue hardship.

(2) Concerning the tolerance provided in subparagraph (1) of this paragraph, the maximum amount of overtime pay under the Fair Labor Standards Act and 1788 of this title may be computed. Under these provisions, payments for occasional periods when no work is performed, due to vacations, and similar causes are excluded from the regular rate. Under the Fair Labor Standards Act, such payments, therefore, are also excludable from the basic rate under the Contract Work Hours Standards Act.

(3) See 5.8(c) providing a tolerance subdelegation authority to the heads of Federal agencies to make appropriate adjustments in the amount of liquidated damages established \$500 or less under section 105 of the Act.

Skilled at Washington, D.C., this 28th day of December 1963.

W. WILLIAM WATTS,  
Secretary of Labor.

## DEPARTMENT OF LABOR

### Office of the Secretary

(General Order No. 42, 63)

### WAGE APPEALS BOARD Establishment and Functions

1. Authority. This order is issued pursuant to R.S. 141, 5 U.S.C. 22, Reorganization Plan No. 6 of 1950, 5 U.S.C. 611, note, and Reorganization Plan No. 14 of 1950, 5 U.S.C. 1332, 15, note.

2. Purpose. The purpose of this Order is to establish a Wage Appeals Board and to authorize the Board to carry out certain functions of the Secretary of Labor under Reorganization Plan No. 14 of 1950, 5 U.S.C. 1332, 15, note; any statutes subject to that Plan, which include Davis-Bacon Act (40 U.S.C. 276a-7), and as extended to the Federal Aid Highway Act of 1956 (23 U.S.C. 113), Copeland Act (40 U.S.C. 276c), Contract Work Hours Standards Act (40 U.S.C. 327, 330), National Housing Act (42 U.S.C. 1713, 1715a, 1715b, 1715c, 1715d, 1715e, 1715f, 1715g, 1715h, 1715i, 1715j, 1715k, 1715l, 1715m, 1715n, 1715o, 1715p, 1715q, 1715r, 1715s, 1715t, 1715u, 1715v, 1715w, 1715x, 1715y, 1715z, 1715aa, 1715ab, 1715ac, 1715ad, 1715ae, 1715af, 1715ag, 1715ah, 1715ai, 1715aj, 1715ak, 1715al, 1715am, 1715an, 1715ao, 1715ap, 1715aq, 1715ar, 1715as, 1715at, 1715au, 1715av, 1715aw, 1715ax, 1715ay, 1715az, 1715ba, 1715bb, 1715bc, 1715bd, 1715be, 1715bf, 1715bg, 1715bh, 1715bi, 1715bj, 1715bk, 1715bl, 1715bm, 1715bn, 1715bo, 1715bp, 1715bq, 1715br, 1715bs, 1715bt, 1715bu, 1715bv, 1715bw, 1715bx, 1715by, 1715bz, 1715ca, 1715cb, 1715cc, 1715cd, 1715ce, 1715cf, 1715cg, 1715ch, 1715ci, 1715cj, 1715ck, 1715cl, 1715cm, 1715cn, 1715co, 1715cp, 1715cq, 1715cr, 1715cs, 1715ct, 1715cu, 1715cv, 1715cw, 1715cx, 1715cy, 1715cz, 1715da, 1715db, 1715dc, 1715dd, 1715de, 1715df, 1715dg, 1715dh, 1715di, 1715dj, 1715dk, 1715dl, 1715dm, 1715dn, 1715do, 1715dp, 1715dq, 1715dr, 1715ds, 1715dt, 1715du, 1715dv, 1715dw, 1715dx, 1715dy, 1715dz, 1715ea, 1715eb, 1715ec, 1715ed, 1715ee, 1715ef, 1715eg, 1715eh, 1715ei, 1715ej, 1715ek, 1715el, 1715em, 1715en, 1715eo, 1715ep, 1715eq, 1715er, 1715es, 1715et, 1715eu, 1715ev, 1715ew, 1715ex, 1715ey, 1715ez, 1715fa, 1715fb, 1715fc, 1715fd, 1715fe, 1715ff, 1715fg, 1715fh, 1715fi, 1715fj, 1715fk, 1715fl, 1715fm, 1715fn, 1715fo, 1715fp, 1715fq, 1715fr, 1715fs, 1715ft, 1715fu, 1715fv, 1715fw, 1715fx, 1715fy, 1715fz, 1715ga, 1715gb, 1715gc, 1715gd, 1715ge, 1715gf, 1715gg, 1715gh, 1715gi, 1715gj, 1715gk, 1715gl, 1715gm, 1715gn, 1715go, 1715gp, 1715gq, 1715gr, 1715gs, 1715gt, 1715gu, 1715gv, 1715gw, 1715gx, 1715gy, 1715gz, 1715ha, 1715hb, 1715hc, 1715hd, 1715he, 1715hf, 1715hg, 1715hh, 1715hi, 1715hj, 1715hk, 1715hl, 1715hm, 1715hn, 1715ho, 1715hp, 1715hq, 1715hr, 1715hs, 1715ht, 1715hu, 1715hv, 1715hw, 1715hx, 1715hy, 1715hz, 1715ia, 1715ib, 1715ic, 1715id, 1715ie, 1715if, 1715ig, 1715ih, 1715ii, 1715ij, 1715ik, 1715il, 1715im, 1715in, 1715io, 1715ip, 1715iq, 1715ir, 1715is, 1715it, 1715iu, 1715iv, 1715iw, 1715ix, 1715iy, 1715iz, 1715ja, 1715jb, 1715jc, 1715jd, 1715je, 1715jf, 1715jg, 1715jh, 1715ji, 1715jj, 1715jk, 1715jl, 1715jm, 1715jn, 1715jo, 1715jp, 1715jq, 1715jr, 1715js, 1715jt, 1715ju, 1715jv, 1715jw, 1715jx, 1715jy, 1715jz, 1715ka, 1715kb, 1715kc, 1715kd, 1715ke, 1715kf, 1715kg, 1715kh, 1715ki, 1715kj, 1715kk, 1715kl, 1715km, 1715kn, 1715ko, 1715kp, 1715kq, 1715kr, 1715ks, 1715kt, 1715ku, 1715kv, 1715kw, 1715kx, 1715ky, 1715kz, 1715la, 1715lb, 1715lc, 1715ld, 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1715pz, 1715qa, 1715qb, 1715qc, 1715qd, 1715qe, 1715qf, 1715qg, 1715qh, 1715qi, 1715qj, 1715qk, 1715ql, 1715qm, 1715qn, 1715qo, 1715qp, 1715qq, 1715qr, 1715qs, 1715qt, 1715qu, 1715qv, 1715qw, 1715qx, 1715qy, 1715qz, 1715ra, 1715rb, 1715rc, 1715rd, 1715re, 1715rf, 1715rg, 1715rh, 1715ri, 1715rj, 1715rk, 1715rl, 1715rm, 1715rn, 1715ro, 1715rp, 1715rq, 1715rr, 1715rs, 1715rt, 1715ru, 1715rv, 1715rw, 1715rx, 1715ry, 1715rz, 1715sa, 1715sb, 1715sc, 1715sd, 1715se, 1715sf, 1715sg, 1715sh, 1715si, 1715sj, 1715sk, 1715sl, 1715sm, 1715sn, 1715so, 1715sp, 1715sq, 1715sr, 1715ss, 1715st, 1715su, 1715sv, 1715sw, 1715sx, 1715sy, 1715sz, 1715ta, 1715tb, 1715tc, 1715td, 1715te, 1715tf, 1715tg, 1715th, 1715ti, 1715tj, 1715tk, 1715tl, 1715tm, 1715tn, 1715to, 1715tp, 1715tq, 1715tr, 1715ts, 1715tt, 1715tu, 1715tv, 1715tw, 1715tx, 1715ty, 1715tz, 1715ua, 1715ub, 1715uc, 1715ud, 1715ue, 1715uf, 1715ug, 1715uh, 1715ui, 1715uj, 1715uk, 1715ul, 1715um, 1715un, 1715uo, 1715up, 1715uq, 1715ur, 1715us, 1715ut, 1715uu, 1715uv, 1715uw, 1715ux, 1715uy, 1715uz, 1715va, 1715vb, 1715vc, 1715vd, 1715ve, 1715vf, 1715vg, 1715vh, 1715vi, 1715vj, 1715vk, 1715vl, 1715vm, 1715vn, 1715vo, 1715vp, 1715vq, 1715vr, 1715vs, 1715vt, 1715vu, 1715vv, 1715vw, 1715vx, 1715vy, 1715vz, 1715wa, 1715wb, 1715wc, 1715wd, 1715we, 1715wf, 1715wg, 1715wh, 1715wi, 1715wj, 1715wk, 1715wl, 1715wm, 1715wn, 1715wo, 1715wp, 1715wq, 1715wr, 1715ws, 1715wt, 1715wu, 1715wv, 1715ww, 1715wx, 1715wy, 1715wz, 1715xa, 1715xb, 1715xc, 1715xd, 1715xe, 1715xf, 1715xg, 1715xh, 1715xi, 1715xj, 1715xk, 1715xl, 1715xm, 1715xn, 1715xo, 1715xp, 1715xq, 1715xr, 1715xs, 1715xt, 1715xu, 1715xv, 1715xw, 1715xx, 1715xy, 1715xz, 1715ya, 1715yb, 1715yc, 1715yd, 1715ye, 1715yf, 1715yg, 1715yh, 1715yi, 1715yj, 1715yk, 1715yl, 1715ym, 1715yn, 1715yo, 1715yp, 1715yq, 1715yr, 1715ys, 1715yt, 1715yu, 1715yv, 1715yw, 1715yx, 1715yy, 1715yz, 1715za, 1715zb, 1715zc, 1715zd, 1715ze, 1715zf, 1715zg, 1715zh, 1715zi, 1715zj, 1715zk, 1715zl, 1715zm, 1715zn, 1715zo, 1715zp, 1715zq, 1715zr, 1715zs, 1715zt, 1715zu, 1715zv, 1715zw, 1715zx, 1715zy, 1715zz.

3. Revision of previous Order. General Order No. 41 of the Secretary of Labor, 1961 R. 2609, is hereby rescinded.

4. Establishment of Wage Appeals Board. Thereby established a Wage Appeals Board.

5. The Board shall be directly responsible to the Secretary of Labor for the proper performance of the delegated authority conferred in Paragraph 8 of this Order. The Board shall operate under the rules of the Secretary of Labor interpreting or applying the statutes listed in Paragraph 2 of this Order.

6. Composition. The Board shall consist of three public members, one of whom shall be designated Chairman. The members of the Board shall be appointed by the Secretary of Labor, and shall be selected upon the basis of their qualifications and competence in matters within the authority of the Board.

7. Voting. The Chairman of the Board may, in his discretion, designate himself or any other member of the Board to decide any appeal provided the

[illegible]

*file in Davis-Bacon Act folder*

ADMINISTRATIVE FILE

*Davis-Bacon Act*

December 26, 1933

Herbert S. Thatcher, Esquire  
1000 Tower Building  
Washington 5, D. C.

Dear Herb:

I would appreciate it very much if you would check with Charlie Donohue on the Davis-Bacon question raised in the enclosed memorandum of Tom Owens. Thanks!

With best wishes and warmest regards,

Sincerely,

Florian Bartosic  
House Counsel

FB/ah  
Enclosure



December 23, 1963

MEMORANDUM

To: Mr. Florian Bartosic  
From: Tom Owens

Attached is a copy of an opinion from Charles Donahue, Solicitor of Labor, given to the Deputy General Counsel, Chief of Engineers, Department of the Army, relative to an on-site ready-mix plant at Cape Canaveral, Florida.

To our knowledge, this is the first opinion of this type in which the Solicitor has ruled that an on-site ready-mix plant is not covered by the provisions of the Davis-Bacon Act. In testing the question of whether or not this plant is temporary, the Solicitor rules that the amount of money spent, some \$350,000, makes it a permanent plant and secondly, that the plant serves various contractors doing work in the Cape Canaveral area. It is not uncommon on large construction projects, particularly those being done by the Government agencies in connection with the missile and other defense programs, to have an on-site ready-mix plant serving more than one contractor on the project. Heretofore, these plants were considered covered by the provisions of Davis-Bacon.

It is important that we take some action in appealing this opinion in order that we may protect our members engaged in this type of work. The Operating Engineers' International Union is planning to take similar action on this opinion and the matter is being handled by Gerard Treanor. It might be well that we undertake this jointly.

I shall appreciate your comments on this after you have had an opportunity to review same.

THC:pf

*Reviewed by Thomas Owens, Jr. Owens -*

*FB.*

MEMO  
FROM

FRANK HANLEY

Mr. Thomas Owens

Enclosed is a copy of a letter from the  
Solicitor of Labor to the General Counsel,  
Office of the Chief of Engineers of the  
Army.

I would appreciate your reviewing this  
communication and letting me have your  
comments.

F.H.

MINI-MAX PRESS, INC.  
NEW YORK  
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U.S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON 25

Mr. Harold F. Blasky  
Deputy General Counsel  
Office of the Chief of Engineers  
Department of the Army  
Washington 25, D. C.

NOVEMBER 14, 1963

Dear Mr. Blasky:

Reference is made to your request for a ruling under section 5.11 of this Department's Regulations, Part 5, concerning the application of the Davis-Bacon Act to employees of Acme Concrete of California, Inc., engaged in and making deliveries from a concrete batching plant located on the Cape Canaveral Missile Test Annex Military Reservation, Florida.

The plant and related improvements have an estimated value of \$350,000. The plant is operated under the terms of a lease with the Federal Government. The lease is for a period of five years, and provides that the lessee shall sell concrete products only to the Government, its agents, contractors, and their subcontractors at Patrick Air Force Base, Cape Canaveral Missile Test Annex, and NASA Manned Lunar Landing Project, in Brevard County, Florida. The lease does not contain Davis-Bacon provisions; it does not propose to relate to any particular construction contract; and it does not appear to be restricted to any particular integrated program or project.

A large number of contracts calling for varied performance are served from the plant. The contracts relate to such things as work on Mercury Control, hangers, warehouses, a helicopter port, a telephone building, satellite support systems, various complexes, a security police building, and other buildings. From the information which you submitted to us and subsequently furnished by Acme, it does not appear that Acme's performance is under the specifications of any particular Government contracts or any series of related contracts.

The questions presented are whether the operations of Acme at the plant are those of a "subcontractor" under the Davis-Bacon Act, and whether its employees working at and from the plant are laborers and mechanics "employed directly upon the work of the (contract) work within the meaning of the act. It is our conclusion that both of these questions must be answered in the negative on the basis of the facts in this case.

Mr. Harold F. Blasky

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We have generally held that a "subcontractor" under the act is one who undertakes the performance of a specific part of a Government construction contract, except where the undertaking is that of an ordinary materialsman or manufacturer. In so holding, we read the term with the limitation that the act's protection is for laborers and mechanics "employed directly upon the site of the (contract) work". The effect of the limitation is to restrict the protection of the act to laborers and mechanics who are engaged directly rather than indirectly or remotely in contract performance or in activities directly related or closely essential thereto.

In applying this interpretation administratively, both functional and geographic tests have been used. The tests are basically: (1) whether the facility is temporary and established virtually exclusively to meet the needs of the contract, or a series of contracts on an integrated project, rather than to serve the public generally; (2) whether the facility is located in the general area of the construction; and (3) whether the facility is integrated with the construction needs.

The operations of the Acme plant do not meet the usual tests of coverage. The considerable investment at the plant and the terms of the lease indicate that the operations are not temporary. It cannot be said that the plant was established to serve exclusively, or virtually so, any particular contract or series of related contracts. Such is not required by the terms of the lease, and numerous contracts of different agencies calling for highly varied construction are served from the plant. Also, it is apparent that the plant will serve contracts for construction not contemplated at the time of the lease. The lease provides for exclusive sales to the Government and its contractors, but the relationship between such sales and the actual performance of any particular contract or series of contracts seems too remote to warrant coverage under the applicable statutory terms. The plant is physically located on the military reservation, and is therefore within the general area of construction. But this fact is not enough to establish the application of the act. Section 2, (1) of this Department's Regulations, Part 3, suggests that manufacturing or supply operations, even when carried out at the actual site of the public building or public work involved, are covered only when they are conducted in connection with the construction activity. This connection must be proximate and not indirect or remote.

The operation of supply facilities on military reservations for servicing Federal construction often present close questions of coverage under the Davis-Bacon Act. The opinion above is based on

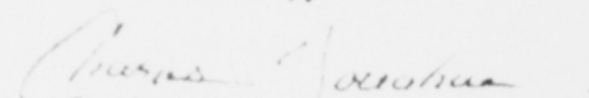


Mr. Harold P. Slasky

Page 3

the particular facts presented and the conclusion reached would not necessarily apply to other situations where the facts are different.

Yours sincerely,

  
Charles Donahoe  
Solicitor of Labor

ADMINISTRATIVE FILE  
Davis-Bacon Act

#### DAVIS-BACON ACT

The Davis-Bacon Act, enacted in 1931 and revised considerably in 1935, is related to the payment of prevailing wages on Federal construction work. In recent years there has been a considerable amount of dissatisfaction with the law on the part of labor, particularly as it pertains to the determination of prevailing rates. Up to now the Secretary of Labor has confined himself to determining only the prevailing basic hourly rate. Payments into pension and health and welfare funds, vacation funds, apprentice training funds, etc., are completely ignored in determining the prevailing rates. This constitutes an open invitation to outside contractors with lower labor costs to move into high wage and benefit areas.

Some efforts have been made to improve the law, not only through amendments but also through improved administration and interpretation, thus far without success. In February, 1959, bills were introduced in the Senate by Senators Humphrey and McNamara and in the House by Roosevelt and Fogarty to amend the law in four respects: (1) To broaden the coverage to include: (a) All non-farm construction in excess of \$25,000 in valuation, at least 1/3 of which is financed by Federal funds, loans, payments, grants or contributions; and (b) all federally insured or guaranteed loans for the purpose of financing any non-farm construction program other than housing developments of less than 10 units; (2) To modernize the term "prevailing wage" to include prevailing contractor payments to health and welfare funds, retirement funds, vacation funds and apprenticeship funds; (3) To put hours

of work and overtime on a prevailing basis; 4) To centralize enforcement and create a construction appeals board.

These are the types of changes that should be made in the law.

As of now the AFL-CIO apparently has no plans to push for enactment of any amendments. The feeling is, apparently, that in view of the Chamber of Commerce and NAM propaganda efforts toward crippling amendments to the law, the present climate toward labor, lack of friends on the appropriate Congressional committee, etc., it would not be wise to push for liberalization. Instead they seem to think that, if anything, any fight that develops will be to retain what we already have.